

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re: Danny Marshall,

Debtor.

Case No. 19-51353

Chapter 13

Hon. Maria L. Oxholm

**OBJECTION BY THE UNITED STATES
TO CONFIRMATION OF DEBTOR'S PROPOSED PLAN**

The United States of America, by its attorneys, United States Attorney, Matthew Schneider, and Assistant United States Attorney, Kevin R. Erskine, on behalf of the Internal Revenue Service, objects to the confirmation of the debtor's plan ("Plan") for the following reasons:

1. Debtor filed a voluntary petition for protection under Chapter 13 of the Bankruptcy Code on August 6, 2019, and filed this plan on August 6, 2019.

2. The IRS's current proof of claim is in the amount of \$774,407.44 and consists of:

Secured Claim:	\$772,000.98
Priority Claim:	\$2,360.08
General Unsecured Claim:	\$46.38
Total	\$774,407.44

3. **Failure to Properly Treat the Secured Claim.** The IRS's secured claim is in the amount of \$772,000.98 and is a Class 5.1 claim that must be paid in

full through the Plan, in equal monthly payments, with the IRS to retain its liens and to receive interest at the IRC rate in effect on the date of confirmation (currently 5%). *See* 11 U.S.C. § 1325(a)(5)(B). The IRS does not consent to the alternative treatment of the secured claim as proposed by the Plan. *See* 11 U.S.C. § 1325(a)(5)(A).¹

4. **Failure to Properly Treat the Priority Claim.** The United States objects to confirmation because the proposed Chapter 13 plan fails to provide for payment of the priority tax liabilities as stated on the IRS's proof of claim. The IRS's priority claim is currently \$2,360.08 and, to be confirmed, the debtor's Plan must provide for the full payment, in deferred cash payments, of all claims entitled to priority under 11 U.S.C. § 1322(a)(2).

5. **Feasibility Not Met.** The proposed Chapter 13 plan also lacks feasibility. A debtor bears the burden of demonstrating all the plan payments will be made. 11 U.S.C. § 1325(a)(6). Based on the debtor's own numbers, when taking into account the claims not properly scheduled, together with those that are

¹ It is important to note that should Debtor seek to challenge the amount of the IRS's claim allocated as secured, because the overwhelming majority of the secured claim arises from Trust Fund Recovery Penalties (TFRPs) assessed pursuant to 26 U.S.C. § 6672, the TFRP portion would be required to be treated as a priority unsecured claim under 11 U.S.C. § 507(a)(8)(C). Thus, the impact on feasibility (objected to below) would be minimal, if at all.

properly scheduled, the plan is not feasible. The debtor has no apparent source of funding to make up the shortfall.

6. Failure to Contribute Entire Projected Disposable Income.

Debtor's Plan fails to commit the full amount of his projected disposable income pursuant to 11 U.S.C. § 1325(b).

7. Incomplete Disclosure. The IRS believes Debtor has failed to provide a full and complete disclosure of information. For example, Debtor failed to list the income of his non-debtor spouse, failed to disclose any rental arrangement (lease, rental expenses, rental income) for his second home, and failed to disclose any balance in a Thrift Savings Plan (TSP) account. Debtor's name also appears on a third real property, redeemed in 2018, which has not been disclosed.

The lack of information, combined with the overwhelmingly unfeasible plan proposed, call in to question whether the plan was filed in good faith.

WHEREFORE, the United States respectfully requests that this Court deny confirmation of the debtor's Plan for the forgoing reasons and grant such further and additional relief as deemed just and appropriate.

Dated: October 1, 2019

MATTHEW SCHNEIDER
United States Attorney

/s/Kevin R. Erskine

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I electronically filed the Objection
By The United States To Confirmation Of Debtor's Proposed Plan using the ECF
System which will send notification of such filings to all counsel of record.

/s/Kevin R. Erskine

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